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No. 307

In the Supreme Court of the United States
OCTOBER TERM, 1965

MARIE [illegible], PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ARCHIBALD COX,
Solicitor General,
Department of Justice,
Washington, D.C., 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 977

MARY BENDELARI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner, alleging on information and belief that at unspecified times the United States infringed upon a patent issued her in 1933, filed suit, in 1964, in the Court of Claims, seeking damages in an unspecified amount. The Court of Claims dismissed the action on October 23, 1964, as barred by the statute of limitations (Pet. App. 1a).[1]

[1] Petitioner made timely application for a new trial which was denied on December 11, 1964. The petition was filed on March 11, 1965.

Petitioner's patent expired without renewal in 1950, 17 years after issuance. 35 U.S.C. 154. Accordingly, the six year statute of limitations for infringement actions against the United States in the Court of Claims ran no later than 1956, some eight years before the filing of the action below. 28 U.S.C. 2501; *Gage* v. *United States*, 103 F. Supp. 1022, certiorari denied, 344 U.S. 829.

Petitioner argues that her action was timely on the theory that her patent was extended and the statute of limitations was tolled under 15 U.S.C. 16(b) as a result of her alleged participation, on the side of the government, in an antitrust proceeding commenced prior to the expiration of the patent.[2] Assuming, *arguendo*, that petitioner or her patent was in some way involved in the antitrust actions, the tolling provision of 15 U.S.C. 16(b) is in no way applicable to her action against the United States for patent infringement. The statute of limitations is tolled only with respect to private actions arising under and "based in whole or in part on any matter complained of" as a violation of the antitrust laws. 15 U.S.C. 16(b).[3]

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[2] Petitioner makes reference in Paragraph "Seventh" of her complaint to two cases involving one Joseph A. Krasnov. One conviction for antitrust violation was affirmed by this Court in 1957. *Krasnov* v. *United States*, 355 U.S. 5. The other case was terminated in 1959 with the entry of a plea of *nolle prosse* (E.D. Pa. Crim. No. 15754).

[3] Section 16(b) provides:

> Whenever any civil or criminal proceeding is instituted by the United States to prevent, restrain, or punish vio-

The decision below is clearly correct and the petition should be denied.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

APRIL 1965.

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lations of any of the antitrust laws, but not including an action under section 15a of this title, the running of the statute of limitations in respect of every private right of action arising under said laws and based in whole or in part on any matter complained of in said proceeding shall be suspended during the pendency thereof and for one year thereafter: *Provided, however,* That whenever the running of the statute of limitations in respect of a cause of action arising under section 15 of this title is suspended hereunder, any action to enforce such cause of action shall be forever barred unless commenced either within the period of suspension or within four years after the cause of action accrued.

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